

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK**

**CASE NO. 13-CV-00320**

**ZALMAN FELLIG, ALISA FELLIG, and  
ELCHONON REIZES, on behalf of themselves and  
all other similarly situated consumers**

**Plaintiffs,**

**v.**

**STELLAR RECOVERY, INC.,**

**Defendant.**

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**DEFENDANT STELLAR RECOVERY, INC.'S  
ANSWER AND AFFIRMATIVE DEFENSES**

COMES NOW Defendant Stellar Recovery, Inc., (“Stellar”) by and through its undersigned counsel, and for its Answer to Plaintiffs’ Complaint, states the following:

**INTRODUCTION**

1. Stellar admits that this Complaint alleges violations of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692, et seq. and the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, et seq., but denies that any such violations have occurred or that Plaintiffs have any right to relief herein.
2. Stellar lacks sufficient information to admit or deny the allegations in Paragraph 2 of Plaintiffs’ Complaint and, therefore, denies the same for the present time.
3. Stellar lacks sufficient information to admit or deny the allegations in Paragraph 3 of Plaintiffs’ Complaint and, therefore, denies the same for the present time.

4. Stellar lacks sufficient information to admit or deny the allegations in Paragraph 4 of Plaintiffs' Complaint and, therefore, denies the same for the present time.

5. Stellar admits the allegations in Paragraph 5 of Plaintiffs' Complaint.

6. Stellar admits that a portion of its business includes the collection of debts owed by consumers. Stellar denies the remaining allegations in Paragraph 6 of Plaintiffs' Complaint.

7. Stellar admits that in certain circumstances it is a debt collector as defined by the FDCPA. Stellar lacks sufficient information to admit or deny the remaining allegations in Paragraph 7 of Plaintiffs' Complaint and, therefore, denies the same for the present time.

#### **JURISDICTION AND VENUE**

8. Stellar admits that generally, jurisdiction of this Court is appropriate pursuant to 28 U.S.C. § 1331 and 15 U.S.C. § 1692k(d) as alleged in Paragraph 8 of Plaintiffs' Complaint, but denies that Plaintiffs are entitled to the relief requested herein.

9. Stellar admits the allegations in Paragraph 9 of Plaintiffs' Complaint, but denies that Plaintiffs are entitled to the relief requested herein.

#### **RESPONSE TO ALLEGATIONS PARTICULAR TO ZALMAN FELLIG, ALISA FELLIG, AND ECHONON REIZES**

10. Stellar admits that it attempted to collect a debt from Plaintiff Zalman Fellig ("Plaintiff Zalman"). Stellar denies the remaining allegations in Paragraph 10 of Plaintiffs' Complaint.

11. Stellar admits that during its attempt to collect a debt from Plaintiff Zalman it did leave messages on occasion. Stellar lacks sufficient information to admit or deny the remaining allegations in Paragraph 11 of Plaintiffs' Complaint and, therefore, denies the same for the present time.

12. Stellar admits that it has more than one call center location and that it uses a computerized system to track its accounts and has a dialing system, which it alleges is not an autodialer. Stellar denies the remaining allegations in Paragraph 12 of Plaintiffs' Complaint.

13. Stellar admits that it makes multiple efforts to reach a consumer who has an unpaid and past due account. Stellar denies the remaining allegations in Paragraph 13 of Plaintiffs' Complaint.

14. Stellar lacks sufficient information to admit or deny the allegations in Paragraph 14 of Plaintiffs' Complaint and, therefore, denies the same for the present time.

15. Stellar lacks sufficient information to admit or deny the allegations in Paragraph 15 of Plaintiffs' Complaint and, therefore, denies the same for the present time.

16. Stellar denies that all calls placed by it were made by means of an automatic telephone dialing system as defined by the Federal Communication Commission. The remainder of Paragraph 16 of Plaintiffs' Complaint states a legal conclusion, to which no response is warranted. To the extent that a response is deemed necessary, Stellar denies the remaining allegations in Paragraph 16 of Plaintiffs' Complaint.

17. Paragraph 17 of Plaintiffs' Complaint states a legal conclusion, to which no response is warranted. To the extent that a response is deemed necessary, Stellar denies the allegations in Paragraph 17 of Plaintiffs' Complaint.

18. Stellar lacks sufficient knowledge to admit or deny the allegations in Paragraph 18 of Plaintiffs' Complaint and, therefore, denies the same for the present time.

19. Stellar lacks sufficient knowledge to admit or deny the allegations in Paragraph 19 of Plaintiffs' Complaint and, therefore, denies the same for the present time.

20. Stellar denies the allegations in Paragraph 20 of Plaintiffs' Complaint.

21. Paragraph 21 of Plaintiffs' Complaint states a legal conclusion, to which no response is warranted. To the extent that a response is deemed necessary, Stellar denies the allegations in Paragraph 21 of Plaintiffs' Complaint.

22. Stellar denies the allegations in Paragraph 22 of Plaintiffs' Complaint.

23. Paragraph 23 of Plaintiffs' Complaint states a legal conclusion, to which no response is warranted. To the extent that a response is deemed necessary, Stellar denies the allegations in Paragraph 23 of Plaintiffs' Complaint.

24. Paragraph 24 of Plaintiffs' Complaint states a legal conclusion, to which no response is warranted. To the extent that a response is deemed necessary, Stellar denies the allegations in Paragraph 24 of Plaintiffs' Complaint.

25. Stellar lacks sufficient information to admit or deny the allegations in Paragraph 25 of Plaintiffs' Complaint and, therefore, denies the same for the present time.

26. Paragraph 26 of Plaintiffs' Complaint states a legal conclusion, to which no response is warranted. To the extent any response is deemed necessary, Stellar denies the allegations in Paragraph 26 of Plaintiffs' Complaint.

27. Stellar lacks sufficient information to admit or deny the allegations in Paragraph 27 of Plaintiffs' Complaint and, therefore, denies the same for the present time.

28. Stellar lacks sufficient information to admit or deny the allegations in Paragraph 28 of Plaintiffs' Complaint and, therefore, denies the same for the present time.

29. Stellar lacks sufficient information to admit or deny the allegations in Paragraph 29 of Plaintiffs' Complaint and, therefore, denies the same for the present time.



30. Stellar lacks sufficient information to admit or deny the allegations in Paragraph 30 of Plaintiffs' Complaint and, therefore, denies the same for the present time.

31. Stellar lacks sufficient information to admit or deny the allegations in Paragraph 31 of Plaintiffs' Complaint and, therefore, denies the same for the present time.

32. Paragraph 32 of Plaintiffs' Complaint states a legal conclusion, to which no response is warranted. To the extent any response is deemed necessary, Stellar denies the allegations in Paragraph 32 of Plaintiffs' Complaint.

33. Paragraph 33 of Plaintiffs' Complaint states a legal conclusion, to which no response is warranted. To the extent any response is deemed necessary, Stellar denies any allegations in Paragraph 33 of Plaintiffs' Complaint.

34. Stellar lacks sufficient information to admit or deny the allegations in Paragraph 34 of Plaintiffs' Complaint and, therefore, denies the same for the present time.

35. Stellar lacks sufficient information to admit or deny the allegations in Paragraph 35 of Plaintiffs' Complaint and, therefore, denies the same for the present time.

36. Stellar lacks sufficient information to admit or deny the allegations in Paragraph 36 of Plaintiffs' Complaint and, therefore, denies the same for the present time.

37. Stellar denies the allegations in Paragraph 37 of Plaintiffs' Complaint alleging Stellar's intentions in leaving messages attempting to locate consumers. The remainder of Paragraph 37 of Plaintiffs' Complaint states a legal conclusion, to which no response is warranted. To the extent any response is deemed necessary, Stellar denies any allegations in Paragraph 37 of Plaintiffs' Complaint.

38. Stellar admits the allegations in Paragraph 38 of Plaintiffs' Complaint.

39. Stellar denies the allegations in Paragraph 39 of Plaintiffs' Complaint.

40. Paragraph 40 of Plaintiffs' Complaint states a legal conclusion, to which no response is warranted. To the extent any response is deemed necessary, Stellar denies any allegations in Paragraph 40 of Plaintiffs' Complaint.

41. Paragraph 41 of Plaintiffs' Complaint states a legal conclusion, to which no response is warranted. To the extent any response is deemed necessary, Stellar denies any allegations in Paragraph 41 of Plaintiffs' Complaint.

42. Stellar denies that it has attempted to deprive consumers of their right to request that further communications cease. The remainder of Paragraph 42 of Plaintiffs' Complaint states a legal conclusion, to which no response is warranted. To the extent any response is deemed necessary, Stellar denies any allegations in Paragraph 42 of Plaintiffs' Complaint.

43. Stellar denies the allegations in Paragraph 43, including sub-paragraphs a, b, and c, of Plaintiffs' Complaint.

44. Stellar denies the allegations in Paragraph 44 of Plaintiffs' Complaint.

45. Stellar lacks sufficient information to admit or deny the allegations in Paragraph 45 of Plaintiffs' Complaint and, therefore, denies the same for the present time.

46. Stellar denies the allegations in Paragraph 46 of Plaintiffs' Complaint.

47. Paragraph 47 of Plaintiffs' Complaint states a legal conclusion, to which no response is warranted. To the extent any response is deemed necessary, Stellar denies any allegations in Paragraph 47 of Plaintiffs' Complaint.

**RESPONSE TO CLASS ALLEGATIONS**

48. Stellar admits that Plaintiffs have brought this as a class action, as stated in Paragraph 48 of Plaintiffs' Complaint. Stellar denies that a class action is appropriate or warranted, as claimed herein.

49. Stellar denies the allegations in Paragraph 49 of Plaintiffs' Complaint.

50. Stellar admits the individuals named in Paragraph 50 of Plaintiffs' Complaint should be properly excluded from any class. Stellar further states that no class is warranted in this matter.

51. Stellar denies the allegations in Paragraph 51 of Plaintiffs' Complaint.

52. Stellar denies the allegations in Paragraph 52 of Plaintiffs' Complaint.

53. Stellar denies the allegations in Paragraph 53 of Plaintiffs' Complaint.

54. Stellar denies the allegations in Paragraph 54, including sub-paragraphs a, b, c, d, and e, of Plaintiffs' Complaint.

55. Stellar denies the allegations in Paragraph 55 of Plaintiffs' Complaint.

56. Stellar denies the allegations in Paragraph 56 of Plaintiffs' Complaint.

57. Paragraph 57 of Plaintiffs' Complaint does not state any allegations against Stellar and, as such, no response is warranted. To the extent that any response is deemed necessary, Stellar denies the allegations in Paragraph 57 of Plaintiffs' Complaint.

**RESPONSE TO PLAINTIFFS' FIRST CAUSE OF ACTION – Alleged Violations  
of the Fair Debt Collection Practices Act brought by Plaintiffs on behalf of  
themselves and as members of a class, as against the Defendant**

58. Stellar restates and reincorporates its responses to Plaintiffs' allegations, set out above in Paragraphs 1 through 57, as if fully stated herein.

59. Stellar admits that Plaintiffs purport to bring this cause of action on their behalf and on behalf of members of two classes, as stated in Paragraph 58 of Plaintiffs' Complaint, but denies that they are entitled to the relief requested herein and that they are appropriate class representatives.

60. Stellar admits that Plaintiffs are trying to create a class as set out in Paragraph 60 of Plaintiffs' Complaint. Stellar denies that any such class exists or that Plaintiffs are appropriate representatives for such a class, and further denies any remaining allegations in Paragraph 60 of Plaintiffs' Complaint.

61. Stellar admits that Plaintiffs are trying to create a class as set out in Paragraph 61 of Plaintiffs' Complaint. Stellar denies that any such class exists or that Plaintiffs are appropriate representatives for such a class, and further denies any remaining allegations in Paragraph 61 of Plaintiffs' Complaint.

62. Stellar denies the allegations in Paragraph 62, including sub-paragraphs a, b, c, d, and e, of Plaintiffs' Complaint.

63. Stellar denies the allegations in Paragraph 63 of Plaintiffs' Complaint.

64. Paragraph 64 of Plaintiffs' Complaint does not state any allegations against Stellar and, as such, no response is warranted. To the extent any response is deemed necessary, Stellar denies any allegations in Paragraph 64 of Plaintiffs' Complaint and further states that a class is not appropriate.



65. Paragraph 65 of Plaintiffs' Complaint states a legal conclusion, to which no response is warranted. To the extent any response is deemed necessary, Stellar denies any allegations in Paragraph 65 of Plaintiffs' Complaint.

**Response to Allegations of Violations of the Fair Debt Collection Practices Act**

66. Stellar denies the allegations in Paragraph 66 of Plaintiffs' Complaint.

67. Stellar denies the allegations in Paragraph 67 of Plaintiffs' Complaint.

**RESPONSE TO PLAINTIFFS' SECOND CAUSE OF ACTION – Alleged Violations of the Telephone Consumer Protection Act brought by Plaintiff Reizes**

68. Stellar restates and reincorporates its responses to Plaintiffs' allegations, set out above in Paragraphs 1 through 67, as if fully stated herein.

69. Stellar denies the allegations in Paragraph 69 of Plaintiffs' Complaint.

70. Stellar denies the allegations in Paragraph 70 of Plaintiffs' Complaint.

71. Stellar denies the allegations in Paragraph 71 of Plaintiffs' Complaint.

72. Stellar denies the allegations in Paragraph 72 of Plaintiffs' Complaint

73. Paragraph 73 of Plaintiffs' Complaint states a legal conclusion, to which no response is warranted. To the extent any response is deemed necessary, Stellar denies the allegations in Paragraph 73 of Plaintiffs' Complaint.

74. Paragraph 74 of Plaintiffs' Complaint states a legal conclusion, to which no response is warranted. To the extent any response is deemed necessary, Stellar denies the allegations in Paragraph 74 of Plaintiffs' Complaint.

75. Stellar denies the allegations in Paragraph 75 of Plaintiffs' Complaint.

76. Stellar admits that Plaintiff Reizes purports to bring this cause of action on his behalf and on behalf of members of two classes, as stated in Paragraph 76 of Plaintiffs' Complaint, but denies that he is entitled to the relief requested herein and that he is an appropriate class representative.

77. Stellar admits that Plaintiff Reizes is trying to create a class as set out in Paragraph 77 of Plaintiffs' Complaint. Stellar denies that any such class exists or that Plaintiff is an appropriate representative for such a class, and further denies any remaining allegations in Paragraph 77 of Plaintiffs' Complaint.

78. Stellar admits that Plaintiff Reizes is trying to create a class as set out in Paragraph 78 of Plaintiffs' Complaint. Stellar denies that any such class exists or that Plaintiff is an appropriate representative for such a class, and further denies any remaining allegations in Paragraph 78 of Plaintiffs' Complaint.

79. Stellar denies the allegations in Paragraph 79, including sub-paragraphs a, b, c, d, and e, of Plaintiffs' Complaint.

80. Stellar denies the allegations in Paragraph 80 of Plaintiffs' Complaint.

81. Paragraph 81 of Plaintiffs' Complaint does not state any allegations against Stellar and, as such, no response is warranted. To the extent any response is deemed necessary, Stellar denies any allegations in Paragraph 81 of Plaintiffs' Complaint and further states that a class is not appropriate.

82. Paragraph 82 of Plaintiffs' Complaint states a legal conclusion, to which no response is warranted. To the extent any response is deemed necessary, Stellar denies any allegations in Paragraph 82 of Plaintiffs' Complaint.

**Response to Allegations of Violations of the  
Telephone Communications Privacy Act [sic]**

83. Stellar denies the allegations in Paragraph 83 of Plaintiffs' Complaint.

84. Stellar denies the allegations in Paragraph 84 of Plaintiffs' Complaint.

Stellar denies that the Plaintiffs, or any purported class, are entitled to the award requested in the WHEREFORE clause of Plaintiffs' Complaint.

**JURY TRIAL DEMAND**

1. Stellar denies that Plaintiffs have any claim herein, and therefore, denies that Plaintiffs are entitled to Trial by Jury as alleged in their Complaint.

**AFFIRMATIVE DEFENSES**

1. Plaintiffs' Complaint fails to state a claim upon which relief can be granted under both of his causes of action.

2. Defendant Stellar affirmatively states that it maintains thorough training procedures for all employees who participate in collection communications. Any collection communication, which may have allegedly violated the FDCPA, may be subject to a *bona fide error* defense.

3. Defendant Stellar affirmatively states that it maintains thorough training procedures and policies to determine if a telephone number is a cellular phone number subject to the TCPA. Any calls which may have allegedly violated the TCPA may be subject to a *bona fide error* defense.

3. Stellar reserves the right to assert any other affirmative defenses as revealed within the discovery process.

WHEREFORE, Stellar prays that Plaintiffs' request for Class Certification be denied,

that Plaintiffs' Complaint be dismissed with prejudice, for its attorney's fees and costs incurred herein, and for such further and other relief as the Court deems just and equitable.

Respectfully submitted,

/s/ Mark Krassner  
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ATTORNEY FOR DEFENDANT

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of February, 2013, I electronically filed the foregoing **DEFENDANT'S ANSWER** with the Clerk of Court using the CM/ECF system which will send notification of such filing to Maxim Maximov at [m@maximovlaw.com](mailto:m@maximovlaw.com), counsel for Plaintiff.

Maxim Maximov  
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ATTORNEY FOR PLAINTIFF

/s/ Mark Krassner  
Attorney for Defendant